

PHYSICAL THERAPY BOARD OF CALIFORNIA

INITIAL STATEMENT OF REASONS

Hearing Date: May 11, 2004

Subject Matter of Proposed Regulations: Electromyography Reports

Section(s) Affected: 1399.70

SPECIFIC PURPOSE:

A report was prepared to comply with the requirements of Section 2620.5(d) of the Business and Professions Code (code) which was added to the code by Chapter 991, Statutes of 1998, as a result of the Sunset Review of the Physical Therapy Board of California (Board) by the Legislature.

The new sub-section of the Business and Professions Code directed the Board to undertake a study assessing the need for, and potential alternatives to, the certification requirement for physical therapists to perform tissue penetration for the purpose of evaluating neuromuscular performance.

The Board found that the performance of electromyography by certified physical therapists has not resulted in any injury to the public. Consequently, the Board could not identify any valid reason to end the ability of physical therapists that specialize in the practice of electromyography to perform the studies.

However, during the course of the study the Board did identify three complaints regarding the performance of electromyography that have been filed against physical therapists. None of the complaints included allegations that a patient had been injured or that the physical therapist was negligent or incompetent. Physician and surgeons filed two of these complaints alleging the report of findings that they received represented a diagnosis. The Board's investigation of these complaints determined that the report of findings did not include a diagnosis, and that the physical therapist had submitted the report to the physician and surgeon in order that a diagnosis could be made.

The third complaint alleged that the physical therapist manipulated the examination and data contained in the report of findings in order to provide a report that would support the position of an insurance company against the patient. When the Board investigated the complaint, the complainant would not cooperate and no evidence of wrong doing by the physical therapist could be found.

The report consequently prompted the need for regulation requiring all certified electromyographers include in their reports to the diagnosing physician and surgeon that the findings reported to the patient's physician shall include the following statement: "This study has been performed in accordance with the California Business and Professions Code, and with the California Code of Regulations. The findings in this report do not represent diagnostic interpretations or medical diagnosis. The results of the electromyographic examination by the certified electromyographer are intended for

integration by the physician and surgeon with the patient's history, clinical examination, and the results of any other tests performed in establishing a medical diagnosis."

This regulatory requirement would provide with certainty a certified electromyographer conducted the evaluation and that the purpose of the evaluative report is solely to assist the physician and surgeon in providing a medical diagnosis to the patient.

FACTUAL BASIS:

Section 2620.5 authorizes a physical therapist, upon specified authorization of a physician and surgeon, to perform tissue penetration for the purpose of evaluating neuromuscular performance as a part of the practice of physical therapy, as defined in Section 2620, provided the physical therapist is certified by the board to perform the tissue penetration and evaluation; and provided the physical therapist does not develop or make diagnostic or prognostic interpretations of the data obtained.

The proposed addition of this section will clarify the evaluation was conducted by a certified electromyographer and that the purpose of the evaluative report is solely to assist the physician and surgeon in providing a medical diagnosis to the patient.

UNDERLYING DATA: There is no underlying data.

SMALL BUSINESS IMPACT: These regulations will not have a significant adverse economic impact on small businesses. The proposed regulations will only affect individual licensees certified to perform electromyography.

SPECIFIC TECHNOLOGIES OR EQUIPMENT: This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES: No alternative considered would either be more effective than or equally less burdensome than the proposed regulations.